

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Pending before the Court is Plaintiff Sean Rodney Orth’s (“Plaintiff’s”) Objection, (ECF No. 32), to the Magistrate Judge’s Report and Recommendation (“R&R”), (ECF No. 30), recommending that the Court dismiss the case. Defendants Phillip Duffy, *et al.* (collectively, “Defendants”) filed a Motion in Support of the Magistrate Judge’s R&R, (ECF No. 33), to which Plaintiff filed a Response, (ECF No. 34).

Also pending before the Court are two Motions for Reconsideration, (ECF Nos. 21, 23), filed by Plaintiff. Defendants filed a Response, (ECF No. 25), to which Plaintiff filed a Reply, (ECF No. 26).

For the reasons discussed below, the Court **GRANTS** Plaintiff's Objection, **DENIES** Defendants' Motion in Support of the Magistrate Judge's R&R, **REJECTS** and **REMANDS** the Magistrate Judge's R&R, and **DENIES** Plaintiff's Motions for Reconsideration without prejudice.¹

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¹ Plaintiff requests that the Court reconsider its Order, (ECF No. 19), denying his Motion for Preliminary Injunction, (ECF No. 5). (Mots. Reconsideration, ECF Nos. 21, 23). Because there is no operative complaint in this case, the Court is unable to rule on Plaintiff’s Motions for Reconsideration. The Court therefore DENIES the Motions for Reconsideration without prejudice. Although “[m]otions for reconsideration must be brought within a reasonable time,” D. Nev. LR 59-1(c), the Court will permit Plaintiff to file a new motion for reconsideration of the Court’s Order, (ECF No. 19), if Plaintiff is able to file a complaint that is not dismissed.

1 **I. BACKGROUND**

2 This case arises out of Defendants' allegedly unlawful search and seizure of Plaintiff.
 3 (See Order, ECF No.19).² On May 18, 2022, Magistrate Judge Cam Ferenbach granted
 4 Plaintiff's Motion/Application to Proceed In Forma Pauperis. (Magistrate Judge's Order, ECF
 5 No. 27). The Magistrate Judge simultaneously dismissed Plaintiff's Complaint, (Compl., ECF
 6 No. 24-1), with leave to amend. (See generally Magistrate Judge's Order, ECF No. 27).³ The
 7 Magistrate Judge dismissed Plaintiff's Complaint based on the *Younger* doctrine and instructed
 8 Plaintiff that “[i]f he amends, he must show whether the criminal charges related to his arrest
 9 have been resolved or are still pending.” (*Id.* 4:10–5:8). Additionally, the Magistrate Judge
 10 dismissed Plaintiff's excessive force claim because Plaintiff did not comply with Rule 8 of the
 11 Federal Rules of Civil Procedure and Plaintiff's Eighth Amendment claim because the Eighth
 12 Amendment does not apply until after there has been an adjudication of guilt. (*Id.* 5:9–6:16).
 13 The Magistrate Judge's Order set a deadline of June 17, 2022, for Plaintiff to file an amended
 14 complaint.

15 Plaintiff submitted an Amended Complaint on May 25, 2022. (See Am. Compl., ECF
 16 No. 29-1).⁴ Although Plaintiff still had sixteen days to comply with the Magistrate Judge's
 17 Order, the Magistrate Judge entered the R&R on June 1, 2022, recommending that the Court
 18 dismiss Plaintiff's claims. (See R&R, ECF No. 30). The Magistrate Judge recommends that the
 19 Court dismiss Plaintiff's claims because the Amended Complaint did not address the issues
 20 raised in the Magistrate Judge's Order granting leave to amend. (*Id.* 2:4–6). Plaintiff objects to
 21 this recommendation. (Objection, ECF No. 32).

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24 ² The Court incorporates the background information of Plaintiff's claims from its previous Order, (ECF No. 19).

25 ³ Plaintiff filed several amended complaints before the Magistrate Judge dismissed the Complaint with leave to
 amend. (See Min. Orders, ECF Nos. 6, 15).

⁴ Courts “liberally construe the ‘inartful pleading’ of pro se litigants.” *Eldridge v. Block*, 832 F.2d 1132, 1137 (9th Cir. 1987).

1 **II. LEGAL STANDARD**

2 A party may file specific written objections to the findings and recommendations of a
3 United States Magistrate Judge made pursuant to Local Rule IB 1-4. 28 U.S.C. § 636(b)(1)(B);
4 D. Nev. R. IB 3-2. Upon the filing of such objections, the Court must make a *de novo*
5 determination of those portions to which objections are made. D. Nev. R. IB 3-2(b).

6 **III. DISCUSSION**

7 The Court finds that the Magistrate Judge entered the R&R prematurely, depriving
8 Plaintiff of the opportunity to correct the deficiencies in his Complaint. The Magistrate Judge
9 entered the R&R sixteen days before the deadline for Plaintiff to file an amended complaint.
10 Moreover, Plaintiff had filed several amended complaints before the Magistrate Judge
11 dismissed the Complaint with leave to amend. (*See* Min. Orders, ECF Nos. 6, 15). The fact that
12 Plaintiff filed another amended complaint does not mean he did so in response to the Magistrate
13 Judge's Order, (ECF No. 27).

14 Rather, the timeline suggests Plaintiff did *not* file the Amended Complaint, (ECF No.
15 29-1), in response to the Magistrate Judge's Order. Indeed, Plaintiff asserts that he drafted the
16 Amended Complaint before receiving the Magistrate Judge's Order identifying the
17 shortcomings of his Complaint. (Objection at 3, 5, ECF No. 32). Plaintiff filed ECF No. 29
18 only five days after the Magistrate Judge entered the Order dismissing Plaintiff's Complaint
19 with leave to amend. (*See* Min. Orders, ECF No. 27, 29). The short timeline between the filing
20 of the Magistrate Judge's Order and the filing of Plaintiff's Amended Complaint supports
21 Plaintiff's assertion that he filed his Amended Complaint before receiving the Magistrate
22 Judge's Order. Accordingly, the Court REJECTS the Magistrate Judge's R&R and
23 REMANDS for the Magistrate Judge to provide additional time for Plaintiff to file an amended
24 complaint addressing the deficiencies noted in the Magistrate Judge's Order, (ECF No. 27).

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IV. CONCLUSION

IT IS HEREBY ORDERED that the Objection to the Magistrate Judge's R&R, (ECF No. 32), is **GRANTED**.

IT IS FURTHER ORDERED that the Motion in Support of the Magistrate Judge's Report and Recommendation, (ECF No. 33), is **DENIED**.

IT IS FURTHER ORDERED Report and Recommendation, (ECF No. 30), is **REJECTED and REMANDED**. On Remand, the Magistrate Judge shall provide additional time for Plaintiff to file an amended complaint.

IT IS FURTHER ORDERED that the Motions for Reconsideration, (ECF Nos. 21, 23), are **DENIED without prejudice**. Plaintiff may file a new motion for reconsideration if he files an operative complaint that is not dismissed.

Dated this 29 day of December, 2022.

~~Gloria M. Navarro, District Judge
United States District Court~~